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No. 9

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

THE YOUNGSTOWN SHEET & TUBE COMPANY,
Appellant,

vs.

STANLEY J. BOWERS, TAX COMMISSIONER OF OHIO,
Appellee.

BRIEF OPPOSING MOTION TO DISMISS

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The Tax Commissioner raises two points in his motion to dismiss. First, that removal of any part of appellant's imported ore from the storage pile to the stock houses and stock bins for eventual use in manufacture, destroys the import character of the remainder, as well as every identical successive shipment stored on top of it. Appellant has already discussed this point in its jurisdictional statement, and can only add here that no one imports for the sake of importing. It is a foregone conclusion that the imports will ultimately be used, and this is true of every import. Moreover, a commingling of new with old packaged imports has never been deemed a domestication, even though some packages may have been removed from the older shipment. No reason or authority is cited for the distinction the commis-

sioner claims to draw between bulk fungible and packaged imports.

Secondly, it is argued that the Ohio court was merely making a finding of fact. Whether the finding was of fact or law or mixed, the practice employed by appellant is so commonly used in those businesses and industries which import bulk fungibles that the court's holding is of widespread interest. The facts of this case are not peculiar to this taxpayer.

Respectfully submitted,

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